

35A Am. Jur. 2d Fish, Game, and Wildlife Conservation § 44

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Fish, Game, and Wildlife Conservation
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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 44. Scope of state power to require hunting and fishing licenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

A state may require persons wishing to take fish from waters or to hunt to procure a license to do so from the state,¹ and may make it a criminal act for a person to do so without such a license.² Licenses may also be required of persons engaged as guides in inland fisheries, as well as those engaged in the occupation of guiding hunters.³ A special license may be required for the use of a powerboat or sailboat in fishing.⁴

A license tax may be imposed on the business or occupation of those engaged in packing or canning fish or oysters, without being objectionable as a taking of private property for public use without compensation, and without depriving packers of their property without due process of law or denying them equal protection of the laws.⁵

Different fees may be imposed depending upon different conditions, such as the manner in which fish are to be taken or the means used for taking them.⁶ Larger fees may be imposed upon those who use larger boats or more efficient appliances without making an illegal discrimination,⁷ and a license tax imposed on fish canners may be graduated according to the size of the pack,⁸ or a greater license tax may be imposed upon those using certain fish other than for food than is imposed upon those who are processing fish for use as food.⁹

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Footnotes

¹ *Dapson v. Daly*, 257 Mass. 195, 153 N.E. 454, 49 A.L.R. 1496 (1926); *Tuttle v. Wood*, 35 S.W.2d 1061 (Tex. Civ. App. San Antonio 1930), writ refused, (July 22, 1931).

² *State v. White*, 2017 ME 219, 173 A.3d 544 (Me. 2017) (fishing); *Hayden v. Maryland Department of Natural Resources*, 242 Md. App. 505, 215 A.3d 827 (2019) ("relaying" oysters); *State v. Storms*, 2017-Ohio-8658, 101

N.E.3d 14 (Ohio Ct. App. 4th Dist. Gallia County 2017) (hunting deer).

³ State v. Snowman, 94 Me. 99, 46 A. 815 (1900).

⁴ People v. Setunsky, 161 Mich. 624, 126 N.W. 844 (1910).

⁵ Leonard v. Earle, 279 U.S. 392, 49 S. Ct. 372, 73 L. Ed. 754 (1929).

⁶ Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 4 Alaska Fed. 432 (C.C.A. 9th Cir. 1916).

⁷ Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948) (a state may constitutionally graduate license fees according to the size of the fishing boats used).

⁸ Pacific American Fisheries v. Territory of Alaska, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270, 5 Alaska Fed. 285 (1925).

⁹ Alaska Fish Salting & By-Products Co v. Smith, 255 U.S. 44, 41 S. Ct. 219, 65 L. Ed. 489, 5 Alaska Fed. 20 (1921).